

**REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claim 19 is amended to recite that the excess of inflammatory cytokines, in the step of selecting a patient with an excess of inflammatory cytokines, is an excess of IFN- $\gamma$  and/or IL-6. Support for this amendment can be found at page 2, line 23 *et seq* and page 8, lines 24 *et seq*. Claims 26-32 are being added. New claims 26-32 correspond to the claims as they were pending prior to entrance of the amendment dated 11 October 2005. After amending the claims as set forth above, claims 19-32 are now pending in this application.

**35 U.S.C. § 102(a)**

The Examiner rejects claims 19-25 under 35 U.S.C. § 102(a) as being anticipated by WO 00/06703. The Examiner acknowledges that this reference does not explicitly teach a method of decreasing expression of one or more inflammatory cytokines selected from the group of IFN- $\gamma$  and IL-6, comprising administering to the patient stressed mammalian blood cells. Regardless, the Examiner alleges that WO 00/06703 anticipates the present claims because “the instant claims and the reference method both administered the same stressed mammalian blood cells and thus it does not appear that the claim language or limitations result in a manipulative difference in the method steps when compared to the prior art disclosure.”

The Examiner appears to be overlooking the first step of the claimed method, *i.e.* selecting a patient with an excess of inflammatory cytokines (now, as amended, wherein those cytokines are selected from IFN- $\gamma$  and IL-6). As acknowledged by the Examiner, WO 00/06703 teaches a method of treating graft versus host disease (GVHD). The reference fails to teach selecting a patient with an excess of IFN- $\gamma$  and/or IL-6. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (fed. Cir. 1987). See also MPEP § 2131. Since the prior art reference fails to disclose,

expressly or inherently, the step of selecting a patient with an excess of inflammatory cytokines selected from IFN- $\gamma$  and IL-6, WO 00/06703 does not anticipate the invention of claims 19-25.

**35 U.S.C. § 102(b)**

The Examiner also rejects claims 19-25 as being anticipated by WO 98/07436 or U.S. Patent No. 5,980,954. Each of WO 98/07436 and U.S. Patent No. 5,980,954 disclose a method of treating an inflammatory disease, such as inflammatory bowel disease or rheumatoid arthritis, by administering the patient stressed mammalian blood cells. However, neither reference discloses selecting a patient with an excess of inflammatory cytokines selected from the group consisting of IFN- $\gamma$  and IL-6. Each of these references fails to disclose, explicitly or inherently, every element set forth in claims 19-25, and therefore does not anticipate the invention of claims 19-25.

**Obviousness-type Double Patenting**

The examiner rejects claims 19-25, as being unpatentable over claim 1-12 of U.S. Patent NO. 5,980,954. Again, the Examiner appears to be overlooking the step of “selecting a patient with an excess of inflammatory cytokines.” As discussed above, U.S. Patent No. 5,980,954 does not disclose this step. The Examiner fails to provide any analysis regarding how the claims of the cited reference would render the currently pending claims obvious. Applicant urges the Examiner to withdraw this rejection.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to

Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Respectfully submitted,

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